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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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3
4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6

7
8 *Ex parte* GREGORY L. TRAUTH, CLINTON D. BROWN
9 and DANIEL S. ARGO
10

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12 Appeal 2008-1168
13 Application 09/998,941
14 Technology Center 3600
15

16
17 Decided: June 26, 2008
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19

20 *Before* WILLIAM F. PATE, III, MURRIEL E. CRAWFORD and BIBHU
21 R. MOHANTY, *Administrative Patent Judges*.

22
23 PATE, III, *Administrative Patent Judge*.
24

25 DECISION ON APPEAL

26
27 STATEMENT OF CASE

28 The Appellants appeal under 35 U.S.C. § 134 (2002) from a Final
29 Rejection of claims 1-33. We have jurisdiction under 35 U.S.C. § 6(b)
30 (2002).

1 The Appellants claim electronic network implemented methods for
2 notifying employees of a company (such as service representatives) that
3 customer feedback messages (such as complaints and complements) have
4 been received so that the messages can be addressed.

5 Representative independent claims 1 and 22 read as follows:

6 1. An electronic network implemented method for notifying
7 personnel of customer feedback messages, comprising:
8 receiving from a customer a customer feedback message
9 in an electronic format; automatically storing said feedback
10 message from said customer in a database in response to
11 receipt of said customer feedback message in said electronic
12 format;

13 and
14 automatically creating and transmitting an electronic
15 notification message to a first employee of an employer, said
16 electronic notification message providing an indication that a
17 feedback message exists, said automatically creating and
18 transmitting occurring in response to at least one of said
19 receiving and said automatically storing.
20

21 22. An electronic network implemented method for receiving
22 and tracking customer feedback messages, comprising:

23 receiving a customer feedback message of a customer;
24 storing said customer feedback message in a database;
25 creating an electronic notification message indicating that
26 a customer feedback message has been received from an
27 individual customer;

28 promptly transmitting said notification message to an
29 employee of an employer upon receipt of said customer
30 feedback message;

31 accessing said database using a web server to retrieve
32 said customer feedback message to a web browser; and

1 displaying to said employee said customer feedback
2 message within a web page displayed by said web browser.
3

4 The prior art relied upon by the Examiner in rejecting the claims is:
5 Bayer US 2002/0103693 A1 Aug. 1, 2002

6 The Examiner rejected claims 1-4, 7, 17, 18 and 33 under 35 U.S.C.
7 § 102(e) as lacking novelty over Bayer.

8 The Examiner rejected claims 5, 6, 8-16 and 19-32 under 35 U.S.C.
9 § 103(a) as unpatentable over Bayer.

10 We AFFIRM.
11

12 ISSUES

13 The following issues have been raised in the present appeal.

14 1. Whether the Appellants have shown that the Examiner erred in
15 rejecting claims 1-4, 7, 17, 18 and 33 as lacking novelty over Bayer.

16 2. Whether the Appellants have shown that the Examiner erred in
17 rejecting claims 5, 6, 8-16 and 19-32 as unpatentable over Bayer.
18

19 FINDINGS OF FACT

20 The record supports the following findings of fact (FF) by a
21 preponderance of the evidence.

22 1. Bayer discloses an electronic network 110, 112, 114
23 implemented method for notifying personnel including receiving an
24 electronic customer feedback message 710 from a customer, automatically

1 storing the feedback message in a database 600, and transmitting an
2 electronic notification message 810 to a first employee of an employer to
3 provide an indication that a feedback message exists in response to receiving
4 and/or automatically storing the feedback message (Figs. 1, 2, 6-9E; ¶¶
5 [0030], [0032], [0057], [0061], [0068], [0069], [0071], [0073], [0078]).
6 Bayer also discloses accessing the database using a web server to retrieve
7 the customer feedback message to a web browser by other customers
8 ([0079]).

9 2. Bayer inherently discloses automatically creating the electronic
10 notification message because the message for forwarding the feedback
11 message must be created before it is transmitted.

12 3. Bayer does not specifically disclose attaching an audio file to
13 the notification message.

14 4. Bayer does not specifically disclose displaying for the
15 employee, the customer feedback message within a web page displayed by
16 the web browser.

17 PRINCIPLES OF LAW

18
19 “A claim is anticipated only if each and every element as set forth in
20 the claim is found, either expressly or inherently described, in a single prior
21 art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d
22 628, 631 (Fed. Cir. 1987). In addition, “[i]t is well settled that a prior art
23 reference may anticipate when the claim limitations not expressly found in

1 that reference are nonetheless inherent in it.” *In re Cruciferous Sprout*
2 *Litig.*, 301 F.3d 1343, 1349 (Fed. Cir. 2002).

3 “Section 103 forbids issuance of a patent when ‘the differences
4 between the subject matter sought to be patented and the prior art are such
5 that the subject matter as a whole would have been obvious at the time the
6 invention was made to a person having ordinary skill in the art to which said
7 subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727,
8 1734 (2007). The question of obviousness is resolved on the basis of
9 underlying factual determinations including (1) the scope and content of the
10 prior art, (2) any differences between the claimed subject matter and the
11 prior art, (3) the level of skill in the art, and (4) where in evidence, so-called
12 secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18
13 (1966). In *KSR*, the Supreme Court reaffirmed principles based on its
14 precedent that “[t]he combination of familiar elements according to known
15 methods is likely to be obvious when it does no more than yield predictable
16 results.” *KSR*, 127 S.Ct. at 1739. The Court also explained that “[w]hen a
17 work is available in one field of endeavor, design incentives and other
18 market forces can prompt variations of it, either in the same field or a
19 different one. If a person of ordinary skill can implement a predictable
20 variation, § 103 likely bars its patentability. For the same reason, if a
21 technique has been used to improve one device, and a person of ordinary
22 skill in the art would recognize that it would improve similar devices in the
23 same way, using the technique is obvious unless its actual application is
24 beyond his or her skill.” *Id.* at 1740.

The Court further noted that “[t]o facilitate review, this analysis should be made explicit.” *Id.* at 1741, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”). However, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.* at 1741.

ANALYSIS

Claims 1-4, 7, 17, 18 and 33

The Examiner rejected these claims as lacking novelty over Bayer contending that Bayer discloses each and every recited limitation (Ans. 3-5). The Appellants separately argue various claims under this rejection, and thus, we address these separately argued claims in detail *infra*.

Claim 1

The Appellants contend that Bayer does not disclose automatically creating and transmitting a message to an employee in response to either receiving or storing customer feedback as recited in claim 1 (App. Br. 8). In this regard, the Appellants argue that the recited term “automatic” refers to the immediacy of the electronic notification message and rely on portions of the Specification that state the objective of the invention is to provide “nearly immediate” or “real-time” notification of customer complaints to

1 support this argument (App. Br. 8 and 9; Reply Br. 4). However, the
2 Appellants' argument fails from the outset because it is not based on
3 limitations appearing in the claims. *In re Self*, 671 F.2d 1344, 1348 (CCPA
4 1982). We note that absent claim language carrying a narrow meaning, the
5 Examiner should only limit the claim based on the specification or
6 prosecution history when those sources expressly disclaim the broader
7 definition. *In re Bigio*, 381 F.3d 1320, 1325 (Fed Cir. 2004). Such a
8 disclaimer is absent in the present case. The term "automatic" does not
9 connote a time restriction or limit.

10 The Appellants also argue that automatic notification is precluded in
11 Bayer because the disclosed system performs intervening reviews of
12 feedback information (App. Br. 10). This argument is not persuasive and we
13 agree with the Examiner that the limitation "automatically" does not
14 preclude a multi-step process, and is satisfied by use of automation machines
15 (i.e., electronics) to perform a task (i.e., transmit the message notification)
16 (Ans. 13 and 14). As the Examiner also noted, even the Appellants' own
17 disclosed embodiment implements the intervening step of determining who
18 to send the message to based on whether a customer satisfaction exceeds a
19 threshold value (Specification: Fig. 3, Step 304, Pg. 8, l. 17-Pg. 9, l. 14; Ans.
20 13). Therefore, in view of the above, the Appellants have not shown that the
21 Examiner erred in rejecting claim 1 as lacking novelty over Bayer.

22 Claim 3

23 The Appellants also separately argue with respect to dependent claim
24 3 that Bayer does not disclose the recited "receiving a customer satisfaction

rating” limitation because Bayer discloses receiving customer feedback and determining the severity or nature of the customer’s comment or complaint (App. Br. 11). This argument is without merit because the customer feedback disclosed in Bayer clearly includes customer satisfaction rating in which the customer rates the travel services received (Ans. 14 and 15). For example, Figures 9A-9E of Bayer illustrate various embodiments of customer feedback forms in which the customer rates various aspects of travel services based on his/her level of satisfaction (Figs. 9A-9E). Therefore, the Appellants have not shown that the Examiner erred in rejecting claim 3.

Claims 17

The Appellants again rely on arguments submitted relative to claim 1 in asserting the patentability of claims 17 (App. Br. 12). However, we find the Appellants’ arguments unconvincing for the reasons discussed *supra* relative to claim 1.

The Appellants further argue that claim 17 specifically recites “promptly transmitting” the electronic notification message to an employee upon receipt of a customer feedback message, the implicit argument being that the system of Bayer does not promptly transmit the electronic notification message (App. Br. 12). However, as noted by the Examiner, the term “promptly” is “relative in nature and generally means that something is done quickly or expeditiously,” and we agree that this limitation is satisfied by the system of Bayer which utilizes an electronic system to address customer complaints more promptly than prior art customer feedback

1 systems (Ans. 13). Thus, the Appellants have not shown that the Examiner
2 erred in rejecting claim 17 as lacking novelty over Bayer.

3 Claim 33

4 The Appellants rely on arguments submitted relative to claim 1 in
5 arguing the patentability of claim 33 (App. Br. 13). Thus, for the same
6 reasons discussed *supra* relative to claim 1, we find that the Appellants have
7 not shown that the Examiner erred in rejecting claim 33 as lacking novelty
8 over Bayer.

9
10 The remaining dependent claims 2, 4, 7 and 18 that stand rejected as
11 lacking novelty over Bayer are not argued separately by the Appellants.
12 Thus, the Appellants have also failed to show that the Examiner erred in
13 rejecting these dependent claims. *See* 37 C.F.R. § 41.37(c)(1)(vii).

14
15 Claims 5, 6, 8-16 and 19-32

16 The Examiner rejected these claims as unpatentable over Bayer. The
17 Appellants separately argue various claims under this rejection, and thus, we
18 address these separately argued claims in detail *infra*.

19 Claims 5 and 6

20 The Appellants contend that because Bayer does not disclose
21 “receiving a customer satisfaction rating” as recited in claim 3 from which
22 claims 5 and 6 ultimately depend, Bayer cannot teach or suggest the
23 remaining recited steps of claims 5 and 6 that utilize the received customer
24 satisfaction rating (App. Br. 13). However, as discussed *supra* relative to

1 claim 3, we find the Appellants' argument to be without merit. Moreover,
2 Bayer discloses determining whether the received customer feedback should
3 be forwarded to the service provider based on the severity of the feedback,
4 thereby disclosing the recited threshold determination recited in these claims
5 (Fig. 8, Step 806; [0071]). Thus, the Appellants have failed to show that the
6 Examiner erred in rejecting dependent claims 5 and 6.

7 Claims 12-14

8 The Appellants again rely on the unconvincing arguments that Bayer
9 does not teach or suggest "receiving a customer satisfaction rating" or the
10 recited threshold determination, but do not present any other arguments with
11 respect to these claims (App. Br. 14). Thus, for the same reasons addressed
12 *supra*, the Appellants have failed to show that the Examiner erred in
13 rejecting claims 12-14 as unpatentable.

14 Claim 15

15 The Appellants again argue that Bayer does not teach or suggest
16 "satisfaction rating" as similarly argued with respect to claim 3 (App. Br. 15
17 and 16). The Appellants further argue that because Bayer teaches generation
18 of ratings of travel service providers based on periodic queries of stored
19 data, it does not teach automatically generating an electronic notification
20 message as argued with respect to claim 1 (App. Br. 15 and 16). However,
21 for the same reason discussed *supra* relative to claims 1 and 3, we find the
22 Appellants' arguments unconvincing. The fact that Bayer discloses
23 generation of additional ratings of travel service providers which is not
24 generated by the Appellants' invention does not detract from the fact that the

1 customers provide ratings of the travel service providers in the system of
2 Bayer.

3 The Appellants also argue that Bayer does not suggest “attaching said
4 audio file to said notification message” as specifically recited in claim 15
5 (App. Br. 15; FF 3). The Examiner refers to the prior art rejections of claims
6 1-14 and 32 as well as ¶ 78 of Bayer to contend that the recited feature
7 would have been obvious to one of ordinary skill in the art (Ans. 11 and 16).
8 In this regard, the Examiner states that Bayer discloses creating an audio file
9 of the spoken customer feedback message and transmitting the electronic
10 notification message wherein feedback is forwarded to an appropriate
11 service provider’s representative via an electronic mail message (Ans. 8 and
12 9). While Bayer does not appear to explicitly state that the audio file is
13 attached, the Examiner takes Official Notice that transmitting and accessing
14 audio messages through an audio file is well known in the art (Ans. 10).
15 Moreover, the Examiner reasoned that it would have been obvious to one of
16 ordinary skill in the art to modify Bayer to provide the customer feedback
17 message to the service provider’s representative in the original audio format
18 to facilitate analysis of a customer’s emotional state based on voice
19 intonations, etc. (Ans. 10). We find this articulated reason set forth by the
20 Examiner to be rational and sufficient to support the legal conclusion that
21 attaching an audio file to the transmitted electronic notification would have
22 been obvious to one of ordinary skill in the art. *See KSR*, 127 S.Ct. at 1741.

23 The Appellants further argue that Bayer fails to disclose “transmitting
24 a second electronic notification message to a second employee of said

1 employer if said satisfaction rating is below said threshold” as also recited in
2 claim 15 (App. Br. 16 and 17). The Examiner notes that Bayer discloses
3 forwarding of aggregated feedback reports to a travel manager as well as a
4 service provider representative based on a threshold determination, but
5 acknowledges that Bayer fails to disclose that transmission of the second
6 notification message is to a second employee of the same employer (Ans. 7).
7 However, the Examiner states that it is well known in the art for a manager
8 of a company to receive aggregated feedback reports for review and for
9 customer service representatives to receive messages in order to address
10 customer complaints (Ans. 8). Thus, the Examiner concludes that it
11 would have been obvious to one of ordinary skill in the art to provide the
12 aggregated feedback reports disclosed in Bayer to the managers (i.e., second
13 employee) in addition to providing the electronic notification message
14 to the service representatives (i.e., first employee) in order to allow these
15 employees to focus on their respective roles within the company (Ans. 7 and
16 8). We find the Examiner’s articulated reason to be rational and agree with
17 the Examiner that transmitting a second electronic notification message to a
18 second employee of the employer based on a threshold determination would
19 also have been obvious to one of ordinary skill in the art. *See KSR*, 127
20 S.Ct. at 1741.

21 Therefore, in view of the above, we agree with the Examiner that
22 claim 15 would have been obvious to one of ordinary skill in the art in view
23 of Bayer and find that the Appellants have failed to show that the Examiner
24 erred in rejecting claim 15.

1 Claim 20

2 The Appellants rely on the same argument based on the limitation
3 “promptly transmitting said notification message” set forth relative to claim
4 17 in arguing the patentability of claim 20 (App. Br. 17). Thus, because
5 Appellants’ argument for patentability of claim 17 is not persuasive as
6 discussed *supra*, we likewise find that the Appellants have not shown that
7 the Examiner erred in rejecting claim 20 as unpatentable over Bayer.

8 Claim 22

9 The Appellants initially rely on the same argument based on the
10 limitation “promptly transmitting said notification message” set forth
11 relative to claim 17 which we found unconvincing as discussed *supra* (App.
12 Br. 17). The Appellants further argue that Bayer merely discloses posting
13 feedback from travelers on a website for viewing by other travelers, and
14 thus, contends Bayer does not suggest “displaying to said employee said
15 customer feedback message within a web page displayed by said web
16 browser,” as recited in claim 22 (App. Br. 17 and 18; FF 4).

17 The Examiner concedes that Bayer does not specifically disclose this
18 limitation (Ans. 11, 13). However, the Examiner takes Office Notice that
19 making audio files available on the Internet using a link to a web page is
20 well known in the art and reasons that it would have been obvious to one of
21 ordinary skill in the art to allow the employees to use a web server to
22 retrieve the audio file of the customer feedback message by selection of a
23 link in order to facilitate global access to audio feedback, such global access
24 being a well recognized advantage of providing data through the Internet

1 (Ans. 12). We agree, and find that the Examiner's articulated reason to be
2 rational and sufficient to support the legal conclusion of obviousness. *See*
3 *KSR*, 127 S.Ct. at 1741.

4 The Appellants' argument that Examiner is engaging in impermissible
5 hindsight and that there is no suggestion in Bayer motivating the
6 modification suggested is noted (App. Br. 20). However, explicit teaching is
7 not required to properly establish a prima facie case of obviousness. *Id.* at
8 1741. Providing remote access to stored data via a web server is a well
9 known technique and it would have been obvious to one of ordinary skill in
10 the art that providing remote access would improve customer feedback
11 systems in the same manner already well appreciated in the art. *Id.* at 1740.

12 The Appellants further argue that Bayer does not teach a notification
13 message and a transmission of a message (App. Br. 20). We disagree and
14 find that Bayer inherently discloses both messages because a forwarding
15 message with the appropriate addressee (e.g., to the employee of the travel
16 service provider) would have to be created before forwarding the customer
17 feedback message (FF 2). Thus, the Appellants' arguments fail to convince,
18 and the Appellants have not shown that the Examiner erred in rejecting
19 claim 22 as unpatentable over Bayer.

20 Claim 27

21 The Appellants again argue that Bayer does not suggest "providing a
22 link to a web page enabling said employee to playback said audio file" (App.
23 Br. 21). However, as discussed *supra* with respect to claim 22, we concur
24 with the Examiner that the recited invention would have been obvious to one

1 of ordinary skill in the art. While the Appellants have objected to the
2 Examiner's Official Notice and disputes the Examiner's assertion, the
3 Examiner is correct in pointing out that the Appellant has not specifically
4 identified the supposed errors of the Examiner's Official Notice (App. Br.
5 22; Ans. 19). In addition, the Examiner has cited numerous documents in
6 support of the Official Notice (Ans. 19). With respect to the Appellants'
7 assertion that the Examiner's conclusion does not address the technical
8 feasibility of making audio files available on the Internet using a link to a
9 webpage, we concur with the Examiner that such limitations do not appear
10 in the claims and that web implementation would have been within the skill
11 of one of ordinary skill in the art, such technical feasibility being well
12 known (App. Br. 22; Ans. 19 and 20). Thus, the Appellants have not shown
13 that the Examiner erred in rejecting claim 27 as unpatentable over Bayer.

14 Claim 28

15 The Appellants contend that Bayer does not suggest "automatically
16 serv[ing] said electronic notification message to an employee of an employer
17 promptly upon receipt of said customer complaint" or the recited web server
18 that enables the employee to retrieve the complaint record (App. Br. 23).
19 We disagree for the reasons set forth *supra* relative to claims 17, 22 and 27.
20 No other arguments have been presented by the Appellants as to the
21 patentability of independent claim 28. Therefore, the Appellants have failed
22 to show that the Examiner erred in rejecting independent claim 28 as
23 unpatentable over Bayer.

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